# Testimony of

# Ira Rubinstein

# Associate General Counsel,
# E-Commerce
# Microsoft Corporation

# Before the

# Senate Committee on Commerce,
# Science and Transportation

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Chairman Hollings, Ranking Member McCain, Members of this distinguished committee,

thank you for the opportunity to testify before you today on subjects that are very

important to consumers – Internet privacy and the tools that consumers can use to

protect their privacy.   My name is Ira Rubinstein, and I am Associate General Counsel

for e-commerce policy at Microsoft Corporation.  At Microsoft, we are not only dedicated

to protecting consumer privacy, but from an even broader perspective, to building an

online community that consumers trust and to promoting vigorous growth of online

opportunities for all.

## Overview: the Marketplace is Demanding Better Privacy Tools

Today I would like to share with you just one of the things our company is doing around

the issue of online privacy.  For several years, Microsoft has been at the forefront of

promoting privacy online.  We have been developing privacy best practices and

procedures under the leadership of our Director of Corporate Privacy, Richard Purcell.

We have been actively involved in coalitions such as getnetwise.org, which focuses on

building a safer web for our children.  Elsewhere in the company, we are developing

futuristic technological tools that have the potential to ultimately transform how online

privacy protection is delivered to consumers.  Today, I would like to discuss with you the exciting work being done by out Internet Explorer team, the team that is developing the next version of our browsing technology, Internet Explorer 6.0.

Because the web is increasingly important in people's lives, one of the issues customers raise with us more and more is their desire to know that their privacy is being protected when they go online.  When we receive such feedback, we attempt to the extent possible to incorporate features that meet this demand and that give consumers better control of their personal information.  In the end, it's our job to build software that delights our customers.  Because of consumer demand, Microsoft currently has about 25 people working on the privacy protections in Internet Explorer.

**Internet Explorer 6.0: Tackling Online Tracking**

When we talk to our customers, one of the questions they raise most often is whether their web surfing activities can be tracked.  It is an issue that the Microsoft Internet Explorer team has been working to address for about eighteen months now.  Tracking or profiling is the practice of collecting a profile or history of a user's actions across a web site or series of sites.  When combined with "personally identifiable information," such as name, address, phone number or other identification, whoever collects this profile can market or target advertising or other services specifically to a customer.

Much of the online tracking you hear about comes through the use of "cookies," small benign pieces of information that a web site stores on an individual's computer.  It is important to note that cookies in and of themselves are neither good nor bad.  Without cookies, the web wouldn't work as people expect it to.  There would be no

customization, no e-commerce and the economics of the web would be called into question.  However, consumers should still be in control of this technology.

Since most online profiling comes through the use of cookies, Microsoft has been concentrating its privacy protection mechanisms in Internet Explorer around cookie management features, which we have designed to enhance notice and choice of the information practices of the web sites that consumers use.  Based on our experience with a series of test versions of Internet Explorer and our work with the World Wide Web Consortium's (the "W3C's") Privacy Working Group, we believe that the next version of Internet Explorer – IE 6.0 -- will take significant strides in protecting consumers' privacy.

One of the most challenging things about building software for tens or even hundreds of millions of people all around the world is that it needs to work in a way that provides the protection consumers want, but without disrupting or slowing their web browsing experience.  In some of the earlier test versions of privacy protections in Internet Explorer, we found that consumers were actually frustrated with tools that popped-up questions or prompted the consumer every time a cookie might be used for tracking purposes.  It turned out to be too burdensome and confusing for consumers to understand exactly what was going on behind the scenes on their computers.

From the significant usability tests that Microsoft does, we know that if you constantly pop-up privacy questions, users either disregard them or perform whatever action is necessary to make these pop-ups go away.  Obviously, this behavior undermines the goal of protecting the user more thoroughly.  So we've been working to create a solution that helps consumers to control cookies.  And we've been especially focused on so-called third-party cookies that can be used to track your activities across sites – that is,

cookies that come from a party other than the site a consumer is visiting. Our tools help

consumers better understand the source and purpose of the cookie, thereby giving the

consumer more control over whether it is accepted or rejected. Our tools also offer a

default level of privacy protection that is greater than exists on the web today, so that out

of the box, users of Internet Explorer 6.0 enjoy protections they currently do not have.

**Protecting Privacy through Industry Standards**

Before we get deeper into the details, let us focus on the role industry standards have

played in getting us to where we are today. As our engineers were examining the best

path to take to control cookies through Internet Explorer, we were simultaneously

working with the World Wide Web Consortium on a technical standard called the

"Platform for Privacy Preferences Project" or P3P. The goal of P3P is to provide a

common language for a site to describe its data practices – such as what data the site

collects, how the site uses it, who gets access to it, how long the data is retained, what

consumers should do if they have a privacy complaint, etc. The common language

helps web sites describe the important aspects of their information practices according

to a standardized road map.

P3P also provides a mechanism for a site to provide a machine-readable version of its

data practices. The grand vision of P3P is that once sites code their privacy policies

according to the standard, and consumers have P3P tools in their hands, consumers

can automatically match their individual privacy preferences against the practices of the

web sites they are visiting. If the web site satisfies the consumer's preferences, the

consumer enters the web site without incident. If the site does not match the individual's

personal setting, the consumer at least is warned of that fact before proceeding.

In Internet Explorer 6.0, we take a significant first step in promoting adoption of the industry's P3P standard by both web sites and consumers.  By providing a default level of protection out of the box, we are creating incentives for web sites – and especially those that use cookies in a third-party fashion -- to code their privacy policies in the P3P language.  These incentives will exist because we anticipate that millions of web surfers will choose to upgrade to IE 6.0 in the near term and will automatically get the protections IE 6.0 offers.

## Using P3P in Internet Explorer 6.0

Again, based on our earlier research, consumers want to be able to automatically control the use of cookies based on the data practices of the site sending the cookie.  The use of P3P technology to help solve this online tracking problem is a natural fit.

How will this work?  You can actually test these tools now by downloading the public beta version of IE 6.0 at www.microsoft.com/windows/ie.  But to go through them quickly, here is an overview.  By default, in order for third-party cookies to be set to a consumer's computer, a third party that collects personally identifiable information must indicate, via a P3P-compliant mechanism, that the site offers "notice" and "choice."  By notice, we mean that the site provides the consumer a machine-readable privacy policy in P3P format, which clearly states the information collection practices of that party.  If there is no notice, third-party cookies from this site are blocked automatically by IE 6.0.

By choice, we mean that if a web site is reusing a consumer's personally identifiable information, then it must allow the consumer to "opt out" of or "opt in" to that data reuse.

If personal information is being reused, and consumers don't have choice around that use, then the cookies from that third-party web site are blocked.  This approach tracks the arrangement established last summer between the Federal Trade Commission and prominent web advertisers.  The core of that arrangement is that a company that tracks users across sites, at a minimum, must provide notice of that practice and the choice of opting out of it.

To help consumers understand the concepts of notice and choice, the first time a consumer connects to a web site whose privacy practices do not match the default setting in Internet Explorer 6.0, an informational dialog-box appears.  This box attempts to educate the consumer about a new "red eye" privacy icon that appears at the bottom of the browser window and what this icon means in light of the user's privacy settings.  Then, with Internet Explorer 6.0, as users browse other sites that attempt to set cookies but do not meet their privacy settings, the red-eye will reappear, alerting the consumer to potential privacy issues.

While we have taken care to establish what we believe is a workable default setting, we've provided a sliding-scale feature that allows consumers to easily change their privacy settings.  With a single click, consumers can change the default setting to higher privacy settings, which have more stringent requirements for the use of privacy policies, or to lower settings, which are less stringent.  For example, the "high" setting requires all web sites, both first and third-party, to obtain explicit (opt-in) consent before the reuse of personal information.  We additionally have a feature that allows almost infinite customizability of the privacy settings, and we have an "import" function that allows the consumer to download a third party's privacy settings (which, for example, may have default settings different from IE 6.0) and insert them into the browsing technology.

This is just an overview of our technology's features.  We are happy to visit with any congressional office to review the tools in greater detail.

## Our Other Efforts to Promote P3P Adoption

I also want to mention the fact that, in the run-up to the release of IE 6.0, we are actively encouraging web sites to deploy P3P-compliant privacy policies.  Through our ongoing work with the top 100 sites on the web, and with the work that the Internet standards body is doing, by the time that Internet Explorer 6.0 launches this fall, we hope to see significant deployment.  We've also developed what we call a "Privacy Statement Wizard," an automated privacy statement generator that can help smaller sites become P3P-compliant by creating policies simply based on the site's answers to a series of questions about its practices (subject, of course, to legal review by the site's lawyer).  The statement generator is currently available at http://microsoft.com/privacy/wizard.  It also will soon be available at Microsoft's small business web portal, at http://privacy.bcentral.com.

## Putting IE 6.0 in Perspective

Since P3P is an open standard, not controlled by Microsoft in any way, we believe that other companies will develop additional privacy-enhancing technologies that will also interact in an automated fashion with sites that have posted P3P-compliant privacy policies.  In fact, we've already seen the emergence of tools that provide analysis of P3P policies, as well as search engines that only return hits from sites that follow P3P guidelines.  Over the long run, we hope to see widespread adoption of P3P by the web community, as well as increasing consumer understanding of the power that P3P tools put in their hands to enhance – and customize – their privacy protection.  We believe strongly that P3P is an empowering technology and that it can address in a simpler way the complex questions around consumer preferences and the articulation of sites' privacy policies.

We do not believe that the work we've done in IE 6.0 to enhance consumer privacy is a silver-bullet solution, but we do believe it is a significant positive step -- showing that technology can play a critical role in addressing consumers' online privacy concerns.  We believe we have done work that consumers want and that will delight them.  We also believe that allowing individuals to control their own personal information is an important, enduring mission for Microsoft.  It is an ongoing process, and not just a single, all-encompassing step.  We take it seriously because our customers do.  Finally, we believe that these first steps to include serious privacy protection in Internet Explorer will lead to positive cooperation in the industry around this topic and will result in a better Internet and a better economy.  In the future, we at Microsoft expect to do additional work in this area, using P3P or other technologies, and we would be happy to keep you abreast of those efforts.

Again, thank you for allowing me to be with you today, and all of us at Microsoft look

forward to a continuing dialogue.